

Claim 63, line 2, change "taken" to --selected--.

**REMARKS**

Claims 30-31, 38-45, 47-49, 55-61, and 63 have been amended. Claims 30-63 are currently pending in the present application.

Independent claims 30, 39, 48 and 56 have been amended to require an amount of about 1 to about 10 percent by weight, based on the weight of the flour, of polydextrose anti-staling agent be used in the step of forming a baking dough. Basis for the range of polydextrose of from about 1 percent to about 10 percent by weight, based on the flour weight, can be found at page 7, first full paragraph of the specification, which makes it clear that amounts of polydextrose of from about 1 percent to about 10 percent by weight are contemplated for the various compositions which may be made by the methods of claims 30 and 48 and for the doughs of claims 39 and 56.

In addition, independent claims 39 and 56 have been amended in order to limit these claims to methods of making a baked bread product. These claims have also been amended to replace the reference to "yeast" with "leavening agent." Basis for this amendment can be found on pages 14 ("yeast suspension") and 17 ("baking powder") and the disclosure of bread dough which persons skilled in the art know must include a leavening agent in order for it to rise during baking.

Finally, independent claims 30, 39, 48 and 56 have been amended to require that the polydextrose be of the well known class of water-soluble polydextroses. Basis for this amendment is found on page 5, lines 7-8, of the specification.

Claims 30-35, 37-38, 48-49, and 51-55 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,164,216 (Engelbrecht *et al.*) in view of pages 880 and 882 of the *Encyclopedia of Chemical Technology*, 1992 version ("the *Encyclopedia of Chemical Technology*"). This rejection, at least insofar as it applies to claims 30-35, 37-38, 48-49 and 51-55, as amended, is respectfully traversed and reconsideration is requested for the reasons which follow.

The independent claims of the present application relate to methods for making baked products having improved anti-staling properties, as well as to baking doughs used in methods for baking which provide baked products with improved anti-staling properties. The present inventors have surprisingly found that employing an amount of about 1 to about 10 percent by weight, based on the weight of the flour, of a water-soluble polydextrose anti-staling agent gives a surprising improvement in the staling properties of baked products. None of the prior art cited by the Examiner recognizes this unique property of water-soluble polydextrose.

Engelbrecht *et al.* relates to a microwaveable bread product made from dough which may include flour, water, leavening agent, about 7 to about 15 percent by weight of shortening, based on the total weight of flour and about 2.0 percent by weight of fiber, based on the total weight of the flour. Among the materials which are mentioned for use as fiber in the Engelbrecht *et al.* patent are oat bran, wheat bran, soy polysaccharide, psyllium mucilloid, methyl cellulose, and polydextrose (Col. 3, lines 55-58).

Based on the state of the art as of the filing date of the present application, the passing reference in Engelbrecht *et al.* to the use of polydextrose as a fiber material, without specific exemplification, does not render the present claims unpatentable. More specifically, Engelbrecht

*et al.* provides a broad, generic disclosure of a number of parameters (*i.e.*, type of fiber, amount of fiber, and amount of flour) which could be potentially manipulated to arrive at something similar to the present invention, as claimed in the amended claims. This, however, is clearly insufficient to establish anticipation under 35 U.S.C. § 102(b) which requires identity of disclosure. *See In re Meyer*, 202 U.S.P.Q. 175, 179 (C.C.P.A. 1979).

With respect to the issue of obviousness, there must be some reason, suggestion or motivation in the art to make the specific combination of the various disclosed parameters in the manner required to arrive at the presently claimed invention. *See, e.g., In re Deminski*, 230 U.S.P.Q. 313, 316 (Fed. Cir. 1986). The mere fact that the parameters of the prior art could be so combined does not make the combination obvious unless the prior art suggested the desirability of the combination. *See, e.g., In re Gordon*, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984). No such suggestion is present in the record for making this specific combination; therefore, any rejection on this basis could only be supported by impermissible hindsight.

As discussed above, the basis of the presently claimed invention is the use of a specified amount of water-soluble polydextrose to inhibit staling in various yeast leavened baked products and/or in leavened bread products in general. The art of record does not disclose the claimed methods or the dough compositions used in the claimed methods, and provides no disclosure leading one of ordinary skill in the art to use polydextrose in the manner claimed to achieve the anti-staling effect.

Accordingly, all of the present claims are considered to be unobvious over Engelbrecht *et al.* taken alone or in combination with the *Encyclopedia of Chemical Technology* (or any other art of record) on the basis that a person of ordinary skill in the art when reading Engelbrecht *et*

*al.* would have no reason or motivation to select all of the various parameters as required to arrive at the present invention. Moreover, neither Engelbrecht *et al.* nor the *Encyclopedia of Chemical Technology* recognize the significant, unexpected beneficial effect of adding water-soluble polydextrose to a baked product of providing anti-staling properties. For these reasons, favorable consideration and withdrawal of the rejection over Engelbrecht *et al.* in combination with the *Encyclopedia of Chemical Technology* is respectfully requested.

Claims 30, 34-38, 39, 43-47, 48, and 50-63 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Dartey *et al.* '672 in view of Hay, Jr. *et al.* and *The Encyclopedia of Chemical Technology*. This rejection is respectfully traversed and reconsideration is requested for the reasons which follow.

Dartey *et al.* '672 teaches a reduced calorie cracker product produced from dough compositions which may contain 25-85 percent by weight of flour, 0-10% by weight of fat or shortening, 5-20% by weight of a water-soluble polydextrose, 0-5% by weight of an emulsifier, 0.5 to about 5% by weight of a leavening system and 1.5 to 10% of a cellulosic bulking agent. Dartey *et al.* '672 does not teach or suggest that water-soluble polydextrose provides anti-staling properties as is recognized by the present invention.

Example 1 of Dartey *et al.* '672 discloses a composition including 49.72% by weight of flour and 9.31% by weight of polydextrose, based on the total weight of the dough. Example 2 of Dartey *et al.* '672 discloses a composition including 43.81% by weight of flour and 8.93% by weight of polydextrose, based on the total weight of the dough. In terms of the weight percent of polydextrose, based on the weight of the flour, example 1 of Dartey *et al.* '672 contains 18.7% by weight polydextrose, and example 2 of Dartey *et al.* '672 contains 16.6% by weight of

polydextrose. Thus, examples 1-2 of Dartey *et al.* '672 clearly fall outside the scope of all of the claims of the present application since compositions having more than about 10% by weight polydextrose, based on the weight of the flour, are excluded by the present claims. Accordingly, Dartey *et al.* '672 does not anticipate the present claims.

With respect to the broad disclosure of Dartey *et al.* '672, at first glance, the ranges given for the various ingredients appear to overlap with the claimed ranges of ingredients of the present invention. Specifically, if one were to select a composition including an amount of flour at the high end of the range of Dartey *et al.* '672 (i.e. about 55-85% by weight) and including a relatively low amount of water-soluble polydextrose (i.e. about 5-8% by weight), it may be possible to arrive at a composition according to the present invention. However, Dartey *et al.* '672 clearly does not contemplate such compositions and, in fact, teaches a skilled person away from employing the relative amounts of flour and polydextrose which are employed by the present invention.

More specifically, the stated objective of Dartey *et al.* '672 is to provide reduced calorie crackers with a calorie reduction of at least 25% (column 8, lines 4-5). Dartey *et al.* '672 teaches that the caloric content of crackers can be reduced by replacement of either the flour component or the fat/shortening component of the cracker (column 1, lines 31-34 and column 6, lines 35-40). Dartey *et al.* '672 also teaches that water-soluble polydextrose is used primarily as a replacement for the fat/shortening component (column 8, lines 19-20).

In order to arrive at the present invention, a skilled person would have to select a dough composition from Dartey *et al.* '672 having a flour content at the high end of the disclosed range (i.e. about 55-85% by weight). Since the 25% calorie reduction can only be achieved following

the teachings of Dartey *et al.* '672 by reducing flour or replacing fats/shortening with water-soluble polydextrose, selecting a flour content at the high end of the range means that the 25% caloric reduction must be achieved primarily by replacement of fats/shortening with water-soluble polydextrose. In other words, the more flour present in the composition, the more fats/shortening must be replaced by water-soluble polydextrose to achieve the desired caloric reduction, therefore the more water-soluble polydextrose in the composition.

This is important because a skilled person reading Dartey *et al.* '672 would conclude that a composition with a high flour content and a low water-soluble polydextrose content, as would be required to arrive at the present invention, would not achieve the desired level of caloric reduction. Thus, such compositions are not contemplated by Dartey *et al.* '672. This is consistent with Examples 1-2 of Dartey *et al.* '672. In Example 1, the flour content is higher than the flour content of Example 2, and thus, the polydextrose content in Example 1, relative to the flour content (*i.e.*, 18.7%), is also higher than the polydextrose content of Example 2, relative to the flour content (*i.e.*, 16.6%).

Accordingly, for these reasons the teachings of Dartey *et al.* '672, when considered as a whole, do not lead a skilled person to the particular methods or compositions of the present invention. In addition, the Examiner has relied on the Hay, Jr. *et al.* reference as teaching that glycerol monostearate is a known emulsifier and has relied on the *Encyclopedia of Chemical Technology* as teaching the addition of enzymes to improve volume, texture and storage properties of bread. However, neither of these references cures the deficiencies of Dartey *et al.* '672 with regard to teaching the appropriate quantity of water-soluble polydextrose to be used in the compositions of the present invention. For these reasons, it is considered that claims 30-63

S.N.: 08/796,305

Docket No.: 54874.000013

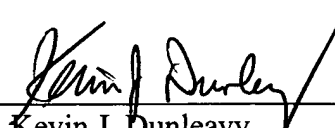
are clearly novel and unobvious over Dartey *et al.* '672 taken alone, or in combination with Hay, Jr. *et al.* and/or the *Encyclopedia of Chemical Technology*. Favorable consideration and withdrawal of the rejection is respectfully requested.

Entry of this amendment and issuance of a Notice of Allowance are requested.

Respectfully submitted,

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Dated: March 31, 1999